(5)

Docket No. 06-1620

IN THE

Supreme Court of the United States

STEPHEN MARTIN and SUSAN MARTIN,
Petitioners

v.

SANDERSON FARMS, INC., JAMES STUDENSKY, and FARMERS STATE BANK,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Certified Fed. R. App. P. 44(a) and (b) challenges that raise a single question have been presented:

Whether 28 U.S.C. §§151, 157, 1334 (made bankruptcy courts units of the Federal District Courts); the Federal Arbitration Act (FAA) and the Texas General Arbitration Act (TGAA); and Article V of the Texas Constitution – are all similarly unconstitutional in that Congress lacks constitutional authority to confer Article III powers on judges who lack the life tenure and salary security of Article III judges.

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The Federalist No.79, at 472 (Alexander Hamilton): "*In the general course of human nature, a power over a man's subsistence amounts to a power over his will.*" 1

ARGUMENT

The issue before this Court questions whether Congress had authority to enact specific statutes[1] to automatically funnel petitions of the bankrupt, poor, and working-class citizens away from life-tenured judges with salary security – effectively establishing a separate and unequal access to justice policy. In addition to abridging the 1st Amendment right to petition an Article III court and the 7th Amendment jury right, the statutes automatically refer petitioners to non-Article III judges before the consent clause in statute is even reached. This exceptional and precedent-setting appeal affords the Justices of this Court a once-in-a-lifetime opportunity to review novel argument with facts based on the very heart of why judicial independence *must* be maintained (for both federal *and* state judges) as required by Article III – which makes no distinction between federal and state judges in the Compensation Clause:

> "The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office."

This Court's opinions make no distinction between federal and state judges under the Compensation Clause; however, legal reporting services add that distinction. *See*

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[1] Article V of the Texas Constitution has also been called into question – in that state District and Supreme Court judges lack the life tenure and salary protection required by Art. III of the United States Constitution. It is human nature for Texas judges, like all non-Article III judges, to be easily influenced by partisan recommendations and political powers. *See* the Federalist No. 79, at 472 (Alexander Hamilton): "In the general course of human nature, a power over a man's subsistence amounts to a power over his will."

Supreme Court of the United States v. Hatter, 532 U.S. 557 (2001) in which headnote five states:

> "Under Compensation Clause, which guarantees that compensation of federal judges shall not be diminished during their continuance in office, legislature cannot directly reduce judicial salaries even as part of an equitable effort to reduce all Government salaries;" however, this Court's opinion actually states, "We concede that this Court has held that the Legislature cannot directly reduce judicial salaries even as part of an equitable effort to reduce all Government salaries."

Obviously, just as federal judicial independence must be maintained through life-time appointments and salary protection – so must state judicial independence be likewise maintained.[2] The Martins stress this point because just as the aforementioned headnote adds Article III distinction between federal and state judges to this Court's opinion, the response of Sanderson Farms, Inc. (SFI) argues,

> "Nor does Article III of the U.S. Constitution require that state judges have the same judicial 'security' of life-time appointment and salary protection as do federal judges. That article addresses the 'judicial power of the United States,' not of the individual states. The U.S. Constitution reserved for the states or to the people those powers

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[2] Respondents write the Martins' complain the state judge acted improperly or unconstitutionally. The Martins have nothing personal against the state judge other than the fact that the state judge is representative of judges in thirty-eight other states with non-life tenured judges – and where subsequent to *Erie*, the common law being created by these easily- influenced state judges is used as the deciding factor in federal diversity cases. The Article III diversity requirement is based on access to life-tenured judges with salary security, so in those states that lack life-tenured judges, the citizens should not be held to diversity legislation limiting access to only the state's unequal judicial forum.

> not delegated to the United States." (SFI response p.11 – referencing the 10th Amendment to the U.S. Constitution).

This argument of SFI fails for several reasons. In the eyes of our Constitutional forefathers, a judge is a judge – with no Article III distinction as to federal vs state judges – so that even the state judicial branch would not have to be dependent upon the good graces of the two political branches of government for their continued upkeep. Also, the Fifth Circuit citing *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), stated:

> "The American colonists suffered greatly under judges controlled by King George III. They listed this grievance in the Declaration of Independence: 'He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.' Declaration of Independence para. 11 (U.S. 1776). The Framers made judicial independence a cornerstone of our judicial system." *In re Clay*, 35 F.3d 190 (5th Cir. 1984).

Obviously, the forefathers had the judges of the individual States in mind when they proposed Article III's Compensation Clause. The 10th Amendment did *not* give the State of Texas authority to retract life-time appointment and salary security guarantees granted to judges under Article III as "a power not delegated to the United States." Indubitably, the judicial "power" had already been delegated to "judges" *before* the 10th Amendment came along. The People of Texas (including the political branches) have agreed to make and keep the Texas Constitution and laws subject to the U.S. Constitution and laws of the U.S. – not the other way around:

> *See* Tex. Const. Art. I. Sec. 1; *McCulloch v. Maryland*, 17 U.S. 316 (1819): "The U.S. Constitution and the laws made in pursuance thereof are supreme; they

> control the constitution and laws of the respective states and cannot be controlled by them." *United States v. Will*, 449 U.S. 200, 217-218 (1980): "A Judiciary free from control by the Executive and Legislature is essential if there is a right to have claims decided by judges who are free from potential domination by other branches of government."; *Marbury v. Madison*, 5 U.S. 137 (1803): "An act of the legislature, repugnant to the constitution, is void."

The responses state the Martins should have taken various actions five years ago in the state court, and disagree with each other on which parties were ordered by the state to arbitrate (*see* Writ Appendix D for the answer to the Respondents' apparent confusion); however, the Respondents seem to rely on the bankruptcy judge's expansion of the parties to the state's arbitration order. A year after discharge, the bankruptcy judge opened the state nonsuit order to the benefit of the Respondents in this appeal, and expanded the parties to the state's arbitration order. The failure of SFI and the Bank to object combined with the fact that their attorneys filed signed pleadings encouraging action to their benefit, acknowledged anew the Martins' standing and rights. Under Texas law, an acknowledgment operates as a new obligation, rather than as a mere revival of prior debt or obligation.[3]

The Respondents lay the major part of their opposition to the Petition for Writ on argument that the Martins lack standing and were required to raise the constitutional issues in the bankruptcy and district courts or in the state court

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[3] "An acknowledgment under Texas law must: (1) be in writing and signed by the party to be charged; (2) contain an unequivocal acknowledgment of ... the existence of the particular obligation; and (3) refer to the obligation and express a willingness to honor that obligation, Tex. Civ. Prac. & Rem. Code § 16.065; *In re Vineyard Bay Development Co., Inc.*, 132 F.3d 269, 271 (5th Cir. 1998).

five years ago. First, both the Fifth Circuit and the District Court left intact the fact that the Martins are "aggrieved". [4] (Writ pg. 3a and 10a).

Secondly, the words of Federal Rule of Appellate Procedure 44 expressly state:

> "The questioning party must give written notice to the circuit clerk immediately upon the filing of the record *or as soon as the question is raised in the court of appeals*."

Obviously, F.R.A.P. 44 neither prohibits a party from raising a question in the court of appeals, nor makes it mandatory that the question must be raised in the district court or to its adjunct. The Bank cites old law pre-dating the enactment of the Federal Rules of Appellate Procedure as the basis for its argument that this Court has a "settled practice to consider on appeal only those questions addressed in the lower courts." (Bank's response p. 3). While SFI does cite newer common law – encouraging this Court to deny review based on argument that the Martins should have raised the constitutional challenge in the bankruptcy court – the fact still remains that the Martins invoked F.R.A.P. 44 as allowed in the Fifth Circuit, and both the Bank and SFI agree that the questions were raised, argued, and opposed in the Fifth Circuit briefs.

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[4] According to Black's Law Dictionary, an aggrieved party is: "a party whose personal, pecuniary, or property rights have been adversely affected by another person's actions or by a court's decree or judgment." Black's Law Dictionary, Abridged Seventh Edition, copyright 2000. "A litigant qualifies as a person aggrieved if the order diminishes his property, increases his burdens, or impairs his rights. *In re San Juan Hotel,* 809 F.2d 151, 154 (1st Cir. 1987); "Standing: A party's right to seek judicial enforcement of a right. To have standing in federal court, a plaintiff must show that the challenged conduct has caused the plaintiff actual injury, and that the interest sought to be protected is within the zone of interests meant to be regulated by the constitutional guarantee in question." Black's Law Dictionary

Arbitration Legislation Is Unconstitutional In That It Abridges The Individual Workers Jury Right And Access To Life-Tenured Judges

The Respondents agree that the Federal Arbitration Act involves arbitrators who "receive their adjudicative powers contractually". (SFI response p. 11). SFI fails to mention their influence persuaded the state district judge and the bankruptcy judge to knowingly order arbitration under a unilateral labor agreement. *See* Writ pg. 20a. The FAA was first enacted in 1925 during the *Lochner* era – a time when "liberty of contract" was a fundamental part of legal doctrine – *Lochner v. New York*, 198 U.S. 45 (1905); however, the *Lochner* doctrine fell out of favor during the New Deal revolution of the 1930's and was portrayed as being "pro-business" and "anti-labor".

In 1934, the Supreme Court decided *Nebbia v. New York* – stating that there is no constitutionally protected fundamental right to freedom of contract. In 1937, the Court decided *West Coast Hotel Co. v. Parrish*, signaling the end of the *Lochner* era; yet, the effect of the FAA – one of the most inequitable pieces of "pro-business, anti-labor" legislation enacted during the *Lochner* era – has been expanded by powerful corporations and used in pre-dispute labor contracts to strip the working class of their constitutional jury right. Arbitration law by its nature automatically circumvents the Article III requirements of life-tenure and salary protection, and denies the individual citizen's jury right before a controversy is even filed. See J. Story, Commentaries On The Constitution Of The U. S. 1757 (1833) regarding the 7th Amendment:

> "[I]t is a most important and valuable amendment, and places upon the high ground of constitutional right the inestimable privilege of a trial by jury in civil cases, ... which is conceded by all to be essential to political and civil liberty." *Id.* at 1762. "All courts shall be open, and

every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law." Tex. Const. Art. I. Sec. 13. "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." U.S. Const. 7th Amendment.

28 U.S.C. §§157(a) and 1334(b) Are Unconstitutional In That They Authorize The Federal District Judge To Automatically Funnel Title 11 Petitions Of The Bankrupt, The Poor, And Discharged Citizens To A Non-Article III Judge Before Petitioners May Reach The Consent Clause In That Statute

The Respondents insist that "the District Court properly refused to withdraw the reference of the bankruptcy case"; however, the issue is that the statute authorized the referral in the first instance *without* the Petitioners' consent; in a second instance gave authority to *order* the Martins (as former debtors) back to the bankruptcy judge *without* the Martins' consent; and in a third instance was used to deny the Martins' §157(d) motion.

On March 7, 2005, the federal district judge denied the Martins' pleadings opposing referral of James Studensky's Rule 9019 "Compromise of the Controversy" motion to the bankruptcy judge *without Petitioners' consent*. (See Pet. Writ App. G):

> "It is further ORDERED that the Bankruptcy Court may proceed with a hearing on Trustee's Motion to Compromise Controversy with Sanderson Farms, Inc."

In other words, district judges are authorized under 28 U.S.C. §157(a) and 28 U.S.C. § 1334(b) to automatically refer motions invoking Title 11 to a bankruptcy judge before the consent requirements under §157 are even reached. In its April 23, 2005 order (denying Petitioners'

28 U.S.C. §157(d) motion and stay motion), the district court stated:

> "Appellants' attempted interlocutory appeal was properly dismissed, this Court properly denied any attempt to stay proceedings in the Bankruptcy Court, and there is no legal basis for withdrawing the reference from the Bankruptcy Court." *See* Writ App. F.

In contradiction to the 1st Amendment, all Title 11 Petitioners are *automatically* denied access to district judges (pursuant to 28 U.S.C. §157(a) and §1334(b)) – effectively denying the right to give consent *before* referral of individual proceedings in their case. *See* 28 U.S.C. §§157(c)(2) and (e)). Then, to "get out" of the bankruptcy court, petitioners (even post-discharge citizens) must file under §157(d) for consent from the district court. In this instant case, Petitioners' 28 U.S.C. §157(d) motion was denied and the 5th Circuit failed to review the appeal of this District Court order. An interlocutory appeal is not a viable remedy (*see* §158a) because it presumes that the Petitioner gave consent under §157(c)(2) and (e) before the referral of individual motions to the bankruptcy judge. In this instant case, the Martins loudly objected to the referral of Rule 9019 motions filed by Mr. Studensky more than a year after discharge – where Rule 9019 only authorizes a Trustee (*not* a former Trustee of a discharged bankruptcy estate) to file a motion regarding a compromise made by the parties to active bankruptcy litigation. *See* Bankruptcy Rule 9019.

The facts of this case are proof positive that billion dollar poultry corporations and poultry lenders hold great influence over non-Article III judges – leaving the farmer with no remedy, no jury right, and no access to an impartial, independent forum. Petitioners' Supplement dated August 1, 2007 shows recent new bankruptcy action bearing on this case. SFI continues to argue against the fact of the existence of the 1998 pre-construction investment

Contract, stating, "There was no 1998 pre-construction investment contract among the Martins, Sanderson Farms, and the Bank." (SFI response p. 5). This argument contradicts facts in all the lower courts' findings. *See e.g.* the Fifth Circuit's opinion in Writ page 2a:

> "This potential cause of action arose from a *series* of agreements between Sanderson and Farmers State for the Martins to construct egg hatching barns for Sanderson with financing from Farmers State and for Susan Martin to work as a hatching egg producer."

The SFI argument against the facts is self-serving and an obvious attempt to cover the evidence of an unjust and devastating "bait and switch" labor scheme that leaves the laborer unpaid and undercuts the beef and pork industry.[5] The 1998 investment Contract and express letters offering the consideration are dated in 1998, are on Sanderson Farms, Inc. letterhead, itemize specific annual expenses totaling $26,700, an annual debt repayment of 58,000, a bank loan of $450,000 @ 8.5%-9% with a 15-year term, an annual "net income before tax" of 36,890, and a statement that "the value of litter as fertilizer and cattle feed may add $3,000 to $6,000 to annual returns."[6]

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[5] "Is it fair to command one man to surrender his constitutional rights, if they are his constitutional rights, in order to prevent another" man's crime from being exposed? Judge Richard T. Rives at hearing in bus boycott case of *Browder v. Gayle*, 142 F. Supp. 707 (M..D.Ala, 1956).

[6] SFI persistently describes the 1998 Contract – that gave them benefit of poultry barns built and equipped to SFI custom specs – as "*a marketing brochure only – it was not a contract.*" These same documents (admitted into evidence on Nov. 3, 2004 along with copies of the federal guarantees) promise "*a fair and profitable return on investment.*" *See* 8/1/07 Supplement, pg. 30a and 33a. The SFI *pro hac vice* attorney (though not admitted to practice until November 9, 2004) attended the November 3rd hearing and objected to the admittance of this evidence. The attorney seeks to sanction the Petitioners for arguing the admitted evidence of the 1998 Contract that is objectionable to SFI.

SFI and the Bank were both listed on the Petitioners' "creditor matrix", and were non-claimants of the bankruptcy estate. Debt related to the 1998 investment Contract (including the promise of investment income in return for custom barn construction) was also scheduled, and was never delinquent. The private potential causes of action were noticed on the bankruptcy petition, and the Trustee never "ripened" them. By its terms, Bankruptcy Rule 9019 does not even grant a Trustee authority to negotiate any compromise. There was no underlying adversarial proceeding and thus no active "claims" against SFI or the Bank on file during bankruptcy.

Petitioners under Title 11 and discharged citizens are denied access to Article III judges for vindication of egregious wrongs committed against them.[7] Access to independent judges is blocked by statute and State Constitution – allowing powerful influences to continue unfettered to ravage the bankrupt, poor, and discharged citizens. Where is the justice in that?

CONCLUSION

For the foregoing reasons and argument, and for the reasons and argument set forth in Petitioner's August 1, 2007 supplement and in the Petition For Writ, this Court should grant certiorari.

Respectfully submitted,

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[7] In the words of Felix Frankfurter, federal courts are the nation's "primary and powerful reliances for vindicating every right given by the Constitution, the laws, and the treaties of the United States." Frankfurter and Landis, "Business of the Supreme Court" (1927, p 65).